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SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037			EXAMINER		
			LUDLOW, JAN M		
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Please find below and/or attached an Office communication concerning this application or proceeding.

Application N. Op/846,330 FUJIMOTO Examiner Jan M. Lutlow Jan M. Lutlo					V/5			
Examiner			Application N .	Applicant(s)	10			
Jan M. Ludlow Jan M. Ludl			09/848,330	FUJIMOTO	•			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Educations of time may be available under the provisions of 3 CFR.1.13(o). In no event, however, may a raply be timely filled the provision of time may be available under the provisions of 3 CFR.1.13(o). In no event, however, may a raply be timely filled 1 the period for reply specified above is less than thiny (30) days, and provided the provision of the period for reply specified above is less than thiny (30) days, and the considered lines). If the period for reply specified above is less than thiny (30) days, and the considered lines). If the period for reply is specified above is less than thiny (30) days, and the considered lines). If the period for reply is specified above is less than thiny (30) days, and the considered lines). If the period for reply is specified above is less than thiny (30) days, and the considered lines). If the period for reply is specified above is less than thiny (30) days, and the considered lines). The period of the period of the communication of the communication of the period of the communication of the period of the communication of the period of the communication of the communication of the period of the provision of		Office Action Summary	Examiner	Art Unit				
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Application/Control Number: 09/848,330

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 2. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 - 1. Determining the scope and contents of the prior art.
 - 2. Ascertaining the differences between the prior art and the claims at issue.
 - 3. Resolving the level of ordinary skill in the pertinent art.
 - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caveney et al.

Caveney et al teaches a pipetter/diluter method in which the system is first primed by drawing reagent (or diluent or buffer, col. 5, line 5) into the system and flushing it out through the hand probe (instant pipette tip). Then sample and/or reagent is aspirated and dispensed, and the system may be flushed with reagent (or diluent or buffer) flowing out of the tip. See, e.g., col. 10, lines 44-65. Multiple reagents can be used (col. 12, line 67). Complicated sequences of aspirating, dispensing and washing may be performed (col. 3, lines 30-50).

Caveney fails to explicitly teach dispensing into a mixing cell.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a mixing cell, such as a test tube to receive the products dispensed as taught by Caveney (col. 12, lines 36-37). Note that the reagent or diluent vessel on the far left of figure 10 corresponds to the liquid cell. With respect to claim 8, it would have been obvious provide both a reagent and a diluent to the vessel in order to use a dilute reagent. With respect to claims 18 and 20, it would have been obvious to provide separate reagent and/or diluent vessels (instant liquid cells) in order to provide multiple reagents as taught by Caveney at col. 12, line 67. With respect to the various aspiration, dispensing and washing steps claimed, it would have been obvious to combine the steps taught by Caveney into complex sequences for use in analysis as taught by Caveney.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (703) 308-4039. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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Jan M. Ludlow Primary Examiner Art Unit 1743

jml

December 14, 2002